



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 99, 105, 106, and 107 (as enacted)
House Bills 5501, 5502, and 5504 (as enacted)
Sponsor: Senator Mark C. Jansen (S.B. 99)
Senator Martha G. Scott (S.B. 105)
Senator Gilda Z. Jacobs (S.B. 106)
Senator Bill Hardiman (S.B. 107)
Representative Mary Valentine (H.B. 5501)
Representative Lesia Liss (H.B. 5502)
Representative Jimmy Womack (H.B. 5504)
Senate Committee: Families and Human Services
House Committee: Families and Children's Services

PUBLIC ACTS 233-236 of 2009**PUBLIC ACTS 237-239 of 2009**

Date Completed: 1-3-11

CONTENT

Senate Bill 99 amended the Friend of the Court Act to do the following:

- Require the Friend of the Court (FOC) to conduct an investigation only if ordered to do so by the court.
- Allow the court, if custody has been established, to order an investigation only if proper cause has been shown or there has been a substantial change of circumstances.
- Permit the FOC, if it conducts a child custody or parenting time investigation, to charge the parties an amount that does not exceed its actual expenses.
- Replace references to "domestic relations mediation" with "alternative dispute resolution".
- Require a person conducting alternative dispute resolution to have qualifications prescribed by the State Court Administrative Office.

Senate Bill 105 amended the divorce Act to delete a provision under which a person ordered to pay spousal or child support had to pay a \$2 monthly service fee, which was credited to the county general fund.

Senate Bill 106 amended the Paternity Act to do the following:

- Provide that the parents of a child born out of wedlock are liable for the medical expenses connected to the mother's pregnancy and the birth of the child.
- Revise the requirements for apportioning the cost of those expenses between the parents in a paternity action.

The bill also repealed Section 19 of the Act, which required the court to order a person ordered to pay support, to pay a monthly service fee of \$2, which was credited to the county general fund.

Senate Bill 107 amended the Family Support Act to do the following:

- Permit a support order to include expenses of health care, child care, education, pregnancy, childbirth, and genetic testing.
- Limit the retroactivity of a child support order.

The bill also repealed Section 7 of the Act, which required the court to order a person ordered to pay support, to pay a monthly fee of \$2, which was credited to the county general fund.

House Bill 5501 amended the Child Custody Act to refer to "alternative dispute resolution", rather than

mediation, in provisions concerning grandparenting time actions.

House Bill 5502 amended the Office of Child Support Act to require the Office of Child Support to coordinate the provision of Title VI-D services by FOC offices, and determine a method to calculate a maximum obligation for reimbursement of medical expenses related to pregnancy and childbirth.

The bill also repealed Section 6a of the Act, which created the Child Support Bench Warrant Enforcement Fund.

House Bill 5504 amended the Revised Judicature Act to do the following:

- Increase from \$1.50 to \$3.50 the monthly fee for services that are not reimbursable under Title IV-D of the Social Security Act, and allocate the additional \$2 to the county general fund.
- Delete a requirement that \$10 of the fees paid in custody, support, and parenting time cases be deposited in the Child Support Bench Warrant Enforcement Fund.

All of the bills took effect on January 8, 2010.

Senate Bill 99 was tie-barred to House Bills 5501 and 5502, which were tie-barred to Senate Bill 99. Senate Bills 105, 106, and 107 were tie-barred to House Bill 5504, which was tie-barred to the three Senate bills. Senate Bills 106 and 107 also were tie-barred to House Bill 5502, and Senate Bill 107 was tie-barred to Senate Bill 106.

Senate Bill 99

FOC Investigation

The Friend of the Court Act previously required the FOC office to investigate and make a written report and recommendation to the parties and to the court regarding child custody, parenting time, or both, under the following circumstances:

- If there was a dispute as to child custody or parenting time, or both, and domestic relations mediation was refused by either party or was unsuccessful.
- If ordered to do so by the court.

Under the bill, the FOC office must investigate and make a written report and recommendation if ordered to do so by the court. If custody has been established by court order, the court may order an investigation only if it first finds that proper cause has been shown or that there has been a change in circumstances.

The bill allows the FOC, under standards prescribed by the State Court Administrative Office (SCAO) under the supervision and direction of the Michigan Supreme Court, to charge the parties an amount that does not exceed the expenses of the office for conducting the investigation and making the report and recommendation. Money collected under that provision must be deposited in the county FOC fund.

If the court orders a whole or partial waiver or suspension of fees in the case because of indigency or inability to pay, the FOC office may not charge that amount for expenses or, if applicable, must reduce it. The FOC may not charge an amount if neither party requested the investigation. If the court determines that a party's request that led to an investigation was frivolous, the court may order that the amount be charged only against that party, and the amount may not be charged against the other party.

The bill deleted a requirement that, if requested by a party, an investigation by the FOC office include a meeting with that party.

Alternative Dispute Resolution

The Act previously required the FOC office to provide, either directly or by contract, domestic relations mediation to assist the parties in voluntarily settling a dispute concerning child custody or parenting time that arose in an FOC case.

Under the bill, in an FOC case, the FOC must provide alternative dispute resolution (ADR) to assist the parties in settling a dispute concerning child custody or parenting time under a plan approved by the chief judge and filed with the SCAO. The ADR must be consistent with standards established by the SCAO under the supervision and direction of the Supreme Court. The plan must include minimum qualifications and training requirements for ADR providers and a

designation of matters subject to alternative dispute resolution by various means.

The bill refers to alternative dispute resolution rather than domestic relations mediation throughout the Act, and refers to providers of ADR rather than domestic relations mediators.

(The bill defines "alternative dispute resolution" as a process established under the Act by which the parties are assisted in voluntarily formulating an agreement to resolve a dispute concerning child custody or parenting time that arises from a domestic relations matter. The bill deleted the definition of "domestic relations mediation", which was similar to the new definition.)

The bill requires an FOC employee or other person who provides ADR to have knowledge of the State court system and the procedures used in domestic relations matters, have knowledge of other resources in the community to which the parties can be referred for assistance, and have any other qualifications as prescribed by the SCAO under the supervision and direction of the Supreme Court.

Previously, if the parties reached an agreement through domestic relations mediation, a consent order incorporating the agreement had to be prepared by an employee of the FOC office who was a member of the State Bar, by a member of the State Bar appointed to assist the FOC office, or by the attorney for one of the parties in the mediation. Under the bill, if the parties reach an agreement through FOC alternative dispute resolution, the agreement must be prepared by an employee of the FOC office or an individual approved by the court, using a form provided by the SCAO under the supervision and direction of the Supreme Court, or approved by the chief judge of the circuit court.

The bill deleted requirements regarding the confidentiality of communication between a domestic relations mediator and a party to the mediation. The bill states that communication between an FOC alternative dispute resolution provider and a party pertaining to the matter subject to ADR is confidential as provided in court rule.

Review of Support Order

Under the Act, after a final judgment containing a child support order has been entered in an FOC case, the office must periodically review the order under certain circumstances, including at the initiative of the office if there are reasonable grounds to believe that the amount of child support awarded in the judgment should be modified or that dependent health care coverage is available and the support order should be modified to include an order for health care coverage.

Reasonable grounds to review an order include any of the following:

- Temporary or permanent changes in the physical custody of a child that the court has not ordered.
- Increased or decreased need of the child.
- Probable access by an employed parent to dependent health care coverage.

Reasonable grounds also include changes financial conditions of a recipient of support or a payer, including an application for or receipt of public assistance, unemployment compensation, or worker's compensation; or incarceration or release from incarceration after a criminal conviction and sentencing to a term of more than one year.

Under the bill, the review must be conducted using a procedure provided in the Act, and reasonable grounds to review an order also include that the order was based on incorrect facts.

FOC Forms for Parties

The Act previously required the FOC Bureau to develop, and the FOC to make available, form motions, responses, and orders for an individual to use to request the court to modify his or her child support, custody, or parenting time order, or for responding to a motion for such a modification, without assistance of legal counsel.

The bill, instead, requires the FOC Bureau to develop and the FOC to make available form motions, responses, and orders to be used by a party, without the assistance of legal counsel, in making or responding to a motion for a payment plan for support arrearages under the Support and Parenting Time Enforcement Act, or for the

modification of a child support, custody, or parenting time order, including a domicile or residence provision.

Required Data Collection

The bill deleted provisions that required each FOC office to compile data on the number and type of complaints regarding support and parenting time, and specified the data that had to be compiled. The bill, instead, requires each FOC office to compile data as required by the SCAO, under the supervision and direction of the Supreme Court.

Health Care Expenses

Under the Act, a complaint seeking enforcement for payment of a health care expense must include information showing that specified conditions have been met. The bill added another condition that must be met: If the SCAO, under the supervision and direction of the Supreme Court, establishes a minimum threshold for the enforcement of health care expenses, the complaint must show that the health care expense is equal to or greater than the established threshold.

County as a Recipient of Support

Under the Act, "recipient of support" means the following:

- The spouse, if the support order orders spousal support.
- The custodial parent or guardian, if the support order orders support for a minor child or a child who is 18 years of age or older.
- The Department of Human Services, if support has been assigned to it.

The bill includes the county, if the minor is in county-supported foster care.

Opening FOC Case; Public Assistance

The Act generally requires the FOC to open and maintain an FOC case for a domestic relations matter, although the parties in the case may file a motion with their initial pleadings for the court to order the FOC not to open an FOC case for the matter. If an FOC case is not opened for a domestic relations matter, the parties have full responsibility for administration and

enforcement of the obligations imposed in the matter. If a party to a domestic relations matter for which there is not an open FOC case applies for services from the FOC or applies for public assistance, the FOC must open or reopen an FOC case. The court then must issue a support order that meets the requirements of Act and the Support and Parenting Time Act for an FOC case.

The bill also permits the court to direct the party applying for services or public assistance or the FOC to prepare a written order and submit it for approval.

Under the bill, for the purpose of these provisions, a party is considered to receive public assistance if he or she receives cash assistance under the Social Welfare Act, medical assistance, or food assistance, or if foster care is being or was provided to a child who is the subject of the case.

Title IV-D Services

The bill requires the FOC Bureau to coordinate the provision of Title IV-D services by the FOC and cooperate with the Office of Child Support in providing those services. (Title IV-D of the Social Security Act deals with the enforcement of child support and parenting time orders.)

Senate Bill 105

Previously, the divorce Act required the court to order the payment of a service fee of \$2 per month, payable on each January 2 and July 2, in order to reimburse the county for the cost of enforcing a spousal or child support order or a parenting time order. The service fee had to be paid by the person ordered to pay the spousal or child support. The fee had to be turned over to the county treasurer and credited to the county general fund.

The bill deleted those provisions.

Senate Bill 106

Pregnancy & Birth Expenses

Under Section 2 of the Paternity Act, the parents of a child born out of wedlock are liable for the necessary support and education of the child, and the child's funeral expenses. Under the bill, the parents also

are responsible for the medical expenses connected to the mother's pregnancy and the birth of the child.

The Act previously permitted the court, based on each parent's ability to pay and any other relevant factor, to apportion between the parents the reasonable and necessary expenses of the mother's confinement and expenses in connection with her pregnancy, in the same manner as medical expenses of the child are divided in the child support formula. The court also could require the parent who did not pay the expense to pay his or her share of the expense to the other parent.

In addition, at the request of a person other than a parent who had paid the expenses of the mother's confinement or expenses in connection with her pregnancy, the court could order a parent against whom the request was made to pay to the person the parent's share of the expenses.

Under the bill, if Medicaid has not paid a medical expense connected to the pregnancy and birth, the court, on request from a parent, must apportion the expense between the parents based on their ability and other relevant factors, if the court determines the expense to be reasonable and necessary. If one parent has paid the expense, the court in its discretion may require the other parent to pay his or her share of the expense to the parent who paid. At the request of a person other than a parent who has paid the expense, the court in its discretion may order a parent against whom the request is made to pay to that person the parent's share of the expense.

Previously, if Medicaid had paid the confinement and pregnancy expenses of a mother, the court could not apportion those expenses to her. Based on the father's ability to pay and any other relevant factor, the court could apportion up to 100% of the reasonable and necessary confinement and pregnancy costs to the father. The bill deleted those provisions.

Under the bill, if Medicaid has paid a medical expense connected to the mother's pregnancy or the birth of the child, on request from the Office of Child Support (OCS) or its designee, the court in a paternity action must do all of the following:

- Determine the amount of the expense that is reasonable and necessary by using the actuarially based case rate established and certified by the Department of Community Health (DCH) or the amount of the expense paid by the DCH.
- Apportion that amount to the father using the method established under the OCS Act.
- Require the father to pay the amount apportioned to him to the Medicaid agency, through the State disbursement unit.

As previously provided, the court may not require the mother to pay any of the expenses.

The Act requires the court to admit in proceedings under the Act a bill for funeral expenses or pregnancy-related expenses of the mother, which constitutes prima facie evidence of the amount of those expenses without third party testimony. The bill also requires the court to admit actuarially based case rates as determined by the DCH, which are prima facie evidence of the relevant funeral or medical expense.

The bill states that Section 2 does not prohibit the DCH from seeking reimbursement of expenses from a party or other person, including an insurer, by a legal procedure other than a paternity action.

Order of Filiation: Fee

When an order of filiation is entered, the Act requires the court to collect a fee from the person against whom the order is entered. Previously, the fee was \$35. The court clerk was required to retain \$9 and remit the balance to the DCH Director.

The bill, instead, requires the court clerk to collect a \$9 fee for entering the order and the fee imposed by Section 2891(9)(a) of the Public Health Code. The clerk is required to retain the \$9 fee and remit the other fee to the DCH Director.

(Section 2891(9)(a) sets a fee of \$40 for an application to create a new birth certificate following an order of filiation or other events.)

Repeal

The bill repealed Section 19 of the Paternity Act. Under that section, to reimburse the county for the cost of enforcing support or parenting time orders, the court had to order the payment of a service fee of \$2 per month, payable on each January 2 and July 2 by the person ordered to pay the support. The service fee had to be turned over to the county treasurer and credited to the county general fund.

Senate Bill 107

Support Order

Under the Family Support Act, if the custodial parent of a minor child is living separately from the noncustodial parent and is refused financial assistance to provide necessary shelter, food, care, and clothing for the child, the custodial parent may file a complaint with the circuit court, seeking an order for support for himself or herself and the minor child or children. Upon hearing the complaint, the court may enter an order for the support of the petitioner and the minor child or children.

The bill specifies that support ordered may include expenses of medical, dental, and other health care, child care, and education, necessary medical expenses incurred in connection with the mother's pregnancy or the birth of the child, and the expense of genetic testing.

The bill provides that a child support obligation is retroactive only to the date that the complaint for support was filed unless any of the following circumstances exist:

- The defendant was avoiding service of process.
- Through domestic violence or other means, the defendant threatened or coerced the complainant not to file a proceeding under the Act.
- The defendant otherwise delayed the imposition of a support obligation.

The bill requires the court to order medical expenses incurred in connection with the mother's pregnancy or the birth of the child in the same manner as medical expenses are ordered under Section 2 of the Paternity Act, and to include in the order provisions as

required by that section for orders entered under that Act.

Repeal

The bill repealed Section 7 of the Family Support Act. Under that section, to reimburse the county for the cost of enforcing support or parenting time orders, the court had to order a person ordered to pay spousal or child support under the Act to pay a service fee of \$2 per month, payable on each January 2 and July 2. The service fee had to be turned over to the county treasurer and credited to the county general fund.

House Bill 5501

The Child Custody Act allows individuals to seek grandparenting time orders under specific circumstances; establishes a rebuttable presumption that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child; and places the burden on the grandparent to rebut the presumption.

Under the bill, if the court determines that the grandparent has met the standard for rebutting the presumption, the court may refer the grandparent's complaint or motion for grandparenting time to alternative dispute resolution. If the complaint or motion is referred to the Friend of the Court for ADR and no settlement is reached within a reasonable time, the complaint or motion must be heard by the court as provided in the Act.

Previously, the Act contained these provisions but referred to mediation service and mediation, rather than alternative dispute resolution.

House Bill 5502

The bill requires the Office of Child Support to coordinate, through the Friend of the Court Bureau, the provision of services under Title IV-D by FOC offices.

The bill also requires the OCS, pursuant to Federal law, to determine a method to calculate a maximum obligation for reimbursement of medical expenses in connection with a mother's pregnancy and the birth of a child. The method must be based on each parent's ability to pay and on

any other relevant factor, and apportion the expenses in the same manner as health care expenses are divided under the child support formula established under the FOC Act.

In addition, the Office of Child Support Act requires the OCS to initiate offset proceedings against the State and Federal tax refunds of a parent who owes past due child support. The OCS must do so upon receiving a request from the Friend of the Court. Under the bill, the OCS also must initiate offset proceedings as required by Federal regulations adopted under Title IV-D.

The bill repealed Section 6a of the Act, which created the Child Support Bench Warrant Enforcement Fund; required the Fund to receive a portion of fees collected in child support, custody, and parenting time actions; and required the OCS to contract with law enforcement agencies to use the Fund for the enforcement of civil warrants related to child support.

House Bill 5504

Allocation of Fees

Under the Revised Judicature Act (RJA), before a final judgment or order is entered in an action in which the custody or parenting time of minor children is determined or modified, the party submitting the judgment or order must pay a fee of \$80. In an action in which the support of minor children is determined or modified, the party submitting the judgment or order must pay a fee of \$40.

Previously, at the end of each month, for each fee collected under those provisions, the court clerk was required to transfer \$10 to the State Treasurer for deposit in the Child Support Bench Warrant Enforcement Fund.

The bill deleted that requirement. As previously required for the balance of the fee, the fee in a custody and parenting time case must be paid to the county treasurer and deposited into the Friend of the Court fund, to be used to fund services that are not Title IV-D services, and the fee in a child support action must be paid to the county treasurer and deposited into the FOC fund.

Increased Service Fee

For services that are not reimbursable under Title IV-D of the Social Security Act, every person who is required to pay support or maintenance to be collected by the FOC must pay a fee for each month or portion of a month that support or maintenance is required to be paid. The fee must be paid monthly, quarterly, or semiannually as directed by the FOC. The bill increased the service fee from \$1.50 to \$3.50.

The RJA requires the FOC or the State disbursement unit to transmit a portion of each service fee to the appropriate county treasurer for deposit into the county's general fund. The bill increased the amount from \$0.25 to \$2.25, and specifies that the money is to be used to fund the provision of services by the FOC that are not reimbursable under Title IV-D.

The bill allows a court to hold a person in contempt if he or she fails or refuses to pay a service fee ordered under these provisions.

MCL 552.502 et al. (S.B. 99)
552.23 & 552.24 (S.B. 105)
722.712 et al. (S.B. 106)
552.451 et al. (S.B. 107)
722.27b (H.B. 5501)
400.233 & 400.233a (H.B. 5502)
600.2137 et al. (H.B. 5504)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 99

Indeterminate revenue increases will result from the provision allowing the Friend of the Court to charge parties for actual costs of investigations and reports regarding child custody and parenting time.

Replacing domestic relations mediation with alternative dispute resolution allows more individuals to take advantage of dispute resolutions.

Senate Bill 105

Revenue from the service fee imposed under the divorce Act continues to be available to counties through a \$2 increase in a service fee under the Revised Judicature Act under

House Bill 5504, which was tie-barred to this legislation. Senate Bill 105 will have no fiscal impact on State or local government.

Senate Bill 106

The bill likely will increase the financial contribution from noncustodial parents for medical expenses. Increases in collected funding from noncustodial parents for medical expenses may reduce State expenditure for Medicaid through increased reimbursement from fathers for medical services already provided to eligible children and through other assistance programs, by increasing financial resources available to custodial parents. The bill also coordinates the fee for an order of filiation with the fee in the Public Health Code.

Senate Bill 107

The bill makes provisions in the Family Support Act consistent with the Paternity Act and therefore has no fiscal impact.

House Bill 5501

The bill will have no fiscal impact on State or local government.

House Bill 5502

The bill requires the Office of Child Support in the Department of Human Services to determine the financial obligation of a noncustodial parent for the medical expenses associated with a mother's pregnancy and the birth of a child in a manner consistent with Federal law. The Office of Child Support noted that the legislation describes a process already used by the Department of Human Services and that no change in program policy would be necessary to implement the legislation. This suggests that there will be no fiscal impact associated with passage of the bill.

House Bill 5504

The \$10 allocated to the Child Support Bench Warrant Enforcement Fund annually generated approximately \$360,000 to \$380,000. While up to 10% of the Fund could be used to administer the Fund, annual revenue was allocated to counties. Eliminating the separate Child Support Bench Warrant Enforcement Fund allocation

streamlines the collection of revenue and will result in administrative savings.

Also, increasing the monthly service fee from \$1.50 to \$3.50 offsets the elimination of the \$2 fee allocated to counties under the divorce Act, the Family Support Act, and the Paternity Act.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.